shares where no certificates were issued), 11 cents: *Provided,* That where such shares or certificates are issued without par or face value, the tax shall be 11 cents per share (corporate share, or investment trust or other organization share, as the case may be), unless the actual value is in excess of $100 per share; in which case the tax shall be 11 cents on each $100 of actual value or fraction thereof of such certificates (or of the shares where no certificates were issued), or unless the actual value is less than $100 per share, in which case the tax shall be 3 cents on each $20 of actual value, or fraction thereof, of such certificates (or of the shares where no certificates were issued): *Provided further,* That where such certificates (or shares, where no certificates are issued) are issued in a recapitalization, the tax payable shall be that proportion of the tax computed on such certificates or shares issued in the recapitalization that the amount dedicated as capital for the first time by the recapitalization, whether by a transfer of earned surplus or otherwise, bears to the total par value (or actual value if no par stock) of such certificates or shares issued in the recapitalization. The stamps representing the tax imposed by this subsection shall be attached to the stock books or corresponding records of the organization and not to the certificates issued.

* * * * *

(26 U.S.C. 1952 ed., Sec. 1802.)

Treasury Regulations 71 (1941 ed.):

Sec. 113.20 [As amended by T.D. 5613, 1948-1 Cum. Bull. 133]. *Scope of Tax.*—Section 1802(a) imposes a tax upon each original issue of certifi-

cates (or shares when issued without certificates) of stock, or of profits, or of interest in property or accumulations by (1) any corporation, or (2) any investment trust or similar organization (whether or not constituting a corporation within the meaning of the Internal Revenue Code) holding or dealing in any of the instruments mentioned or described in section 1801 (see Subpart E) or section 1802(a), or (3) any person (such as a depositary) on behalf of such investment trust or similar organization. The tax applies to each original issue of the shares or certificates specified, irrespective of the purpose of the issue, the person to whom issued, or the time of delivery.

The tax also applies to shares or certificates issued in a recapitalization where the recapitalization results in the dedication of an amount as capital for the first time. However, in the case of shares or certificates so issued on or after August 8, 1947, the tax is subject to the limitation set forth in section 113.23(e).

Sec. 113.23 [As amended by T.D. 5613, *supra*]. *Rate and Computation of Tax.*—* * *

* * * * *

(e) *Stock issued on or after August 8, 1947, in a recapitalization.*—Where stock is issued on or after August 8, 1947, in a recapitalization, the tax payable is that proportion of the total tax computed with respect to all the shares or certificates so issued that the amount dedicated as capital for the first time by the recapitalization, whether by a transfer of earned surplus or otherwise, bears to the total par value (or actual value if no par stock) of the shares or certificates so issued.

A tax is not payable with respect to stock issued in a recapitalization unless the recapitalization results in the dedication of an amount as capital which amount is so dedicated for the first time. Thus, where a corporation transferred an amount from capital to capital surplus in a prior recapitalization, and such corporation in a subsequent or second recapitalization transfers such amount from capital surplus to capital under such circumstances that the amount so restored to capital is clearly identifiable, a tax is not payable with respect to the amount so rededicated as capital. However, the tax is payable with respect to a transfer of capital surplus to capital by way of a recapitalization where the amount so transferred had not been previously dedicated as capital.

Where a recapitalization is effected in connection with, or as part of, some other transaction, for example—an original or an additional issue of stock; a merger; etc.—the limitation of the tax payable to the proportion specified in this subsection applies only to the stock issued in that part of the transaction which constitutes a recapitalization. Thus, where a corporation makes a change in its capital structure by replacing an issue of stock with another issue of stock and at the same time disposes of part of the new stock by sale to underwriters, the tax limitation is applicable only to that portion of the new stock which is issued in exchange for the old stock retired thereby. In such case, the portion of the new stock sold to the underwriters is taxable in its entirety without any adjustment on account of the recapitalization. Similarly, where a corporation retires its preferred stock by issuing common stock in exchange therefor, and such exchange is made in connection

with a merger in which the corporation issues common stock also to the former stockholders of the merged company, the tax limitation is applicable only to the common stock issued in exchange for the preferred stock, and the shares or certificates of common stock issued to the former stockholders of the merged company are subject to tax without any adjustment on account of the recapitalization.

Sec. 113.25. *Issues Not Subject to Tax.*—In addition to the various issues specifically exempt under section 1808, as to which see Subpart J, the following are examples of issues not subject to the tax:

* * * * *

(f) The issue of stock in a recapitalization or reorganization where there is no dedication of additional capital, either by transfer of earned surplus or otherwise.

☆ U. S. GOVERNMENT PRINTING OFFICE 1938 478084 201